

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

WILFREDO TORRES,

Plaintiff,

-against-

THE BLACKSTONE GROUP; ELIJAH  
SMALLS; JULIA RODRIGUEZ,

Defendants.

23-CV-7832 (LTS)

ORDER OF DISMISSAL AND ORDER TO  
SHOW CAUSE UNDER 28 U.S.C. § 1651

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who is appearing *pro se*, brings this action invoking the Court's federal question jurisdiction, 28 U.S.C. § 1331, alleging that Defendants violated his rights. By order dated September 21, 2023, the Court granted Plaintiff's request to proceed *in forma pauperis* ("IFP"), that is, without prepayment of fees. For the reasons set forth in this order, the Court dismisses this action.

**STANDARD OF REVIEW**

The Court must dismiss an IFP complaint, or any portion of the complaint, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see* *Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction of the claims raised. *See* Fed. R. Civ. P. 12(h)(3).

While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the "strongest [claims] that they suggest," *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in

original). But the “special solicitude” in *pro se* cases, *id.* at 475 (citation omitted), has its limits – to state a claim, *pro se* pleadings still must comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to make a short and plain statement showing that the pleader is entitled to relief.

Rule 8 requires a complaint to include enough facts to state a claim for relief “that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible if the plaintiff pleads enough factual detail to allow the Court to draw the inference that the defendant is liable for the alleged misconduct. In reviewing the complaint, the Court must accept all well-pleaded factual allegations as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). But it does not have to accept as true “[t]hreadbare recitals of the elements of a cause of action,” which are essentially just legal conclusions. *Twombly*, 550 U.S. at 555. After separating legal conclusions from well-pleaded factual allegations, the Court must determine whether those facts make it plausible – not merely possible – that the pleader is entitled to relief. *Id.*

### **BACKGROUND**

Plaintiff brings this suit against his landlord, the Blackstone Group; Elijah Smalls, the building superintendent; and Julia Rodriguez, the assistant building superintendent. Plaintiff alleges that Defendants have “sabotaged [his] lawsuits by stealing [his] legal mail, and . . . flood[ing] [his] apartment to damage [his] files.” (ECF 1 at 9.) According to Plaintiff, Defendants stole “a time-sensitive 126-page document sent to [him] by the Supreme Court of the United States on 7-21-2023.” (*Id.*) Plaintiff’s allegations also include the following:<sup>1</sup>

The President of the United States blames CIA black operations, as enforcers of the Deep State, for planting the explosives that demolished the twin towers on 9/11; placed Robert Mueller as Director of the FBI five (5) days before to cover-

---

<sup>1</sup> The Court quotes from the complaint verbatim. All spelling, grammar, and punctuation are as in the original unless otherwise indicated.

up the crime; trashed the U.S. Constitution and created a Stasi-like police-state; CIA units in each police agency to control them; uses the code word “counterterrorism” for gang-stalking against millions of individuals on “watch-lists”; a secret and omnipotent court called Foreign Intelligence Surveillance Court; \$1-trillion yearly to finance these crimes; the news media to disinform and indoctrinate; zero due process of law; no-fly list; defamations in our community, schools, jobs and churches; entrapment in criminal cases; kidnappings, torture, and murders; sabotage and attacks during our medical services; sabotage of our finances; and using children of drug addicts as bait to fabricate pedophilia indictments.

(*Id.* at 8.)

## DISCUSSION

### A. Section 1983 claims

Because Plaintiff invokes the court’s federal question jurisdiction, the Court construes his claims as arising under 42 U.S.C. § 1983. A claim for relief under Section 1983 must allege facts showing that each defendant acted under the color of a state “statute, ordinance, regulation, custom or usage.” 42 U.S.C. § 1983. Private parties therefore generally are not liable under the statute. *Sykes v. Bank of Am.*, 723 F.3d 399, 406 (2d Cir. 2013) (citing *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass’n*, 531 U.S. 288, 295 (2001)); *see also Ciambriello v. Cnty. of Nassau*, 292 F.3d 307, 323 (2d Cir. 2002) (“[T]he United States Constitution regulates only the Government, not private parties.”).

As Defendants Blackstone Group, Elijah Smalls, and Julia Rodriguez are private parties, Plaintiff has not stated a claim against these defendants under section 1983.<sup>2</sup>

### B. Leave to Amend Denied

District courts generally grant a *pro se* plaintiff an opportunity to amend a complaint to cure its defects but leave to amend is not required where it would be futile. *See Hill v. Curcione*,

---

<sup>2</sup> Plaintiff allegations regarding federal agencies and actors are implausible and do not provide a basis for a finding of liability against the named Defendants.

657 F.3d 116, 123–24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988).

Because the defects in Plaintiff’s complaint cannot be cured with an amendment, the Court declines to grant Plaintiff leave to amend his complaint.

**C. Litigation history and order to show cause**

Plaintiff has previously sued the Blackstone Group, Smalls, and Rodriguez and alleged that, due to their interference with his mail, his legal matters are being compromised; he has also filed multiple other cases that were dismissed as frivolous, for failure to state a claim, or for lack of subject matter jurisdiction. *See e.g., Torres v. U.S. Court of Appeals for the Second Circuit*, ECF 1:22-CV-2774, 4 (S.D.N.Y. June 21, 2022) (dismissing complaint for lack of subject matter jurisdiction); *Torres v. U.S. Dep’t of Justice*, ECF 1:21-CV-8427, 10 (S.D.N.Y. Feb. 1, 2022) (dismissing second amended complaint), *aff’d*, 22-0362 (2d Cir. July 7, 2022) (dismissing the appeal as frivolous); *Torres v. New York Legal Assistance Grp.*, ECF 1:20-CV-6396, 4 (S.D.N.Y. Sept. 24, 2020) (dismissing complaint under 28 U.S.C. § 1915(e)(2)(B)(i)), *aff’d*, No. 20-3383 (2d Cir. Mar. 24, 2021); *Torres v. Bellevue South Assocs. L.P.*, ECF 1:16-CV-2362, 455 (S.D.N.Y. Apr. 21, 2021), *aff’d*, No. 21-1313 (2d Cir. Oct. 12, 2021) (dismissing appeal as frivolous); *Torres v. The Blackstone Grp.*, ECF 1:18-CV-6434, 30 (S.D.N.Y. Sept. 30, 2019) (dismissing complaint for lack of subject matter jurisdiction), *aff’d* No. 19-3202 (2d Cir. Jan. 29, 2021); *Torres v. NYC Police Dep’t*, ECF 1:16-CV-3437, 47 (S.D.N.Y. Apr. 21, 2021), *aff’d*, No. 21-1314 (2d Cir. Oct. 12, 2021) (dismissing appeal as frivolous). He has been warned on at least two prior occasions that a filing injunction could be imposed if he continued to engage in this pattern of vexatious litigation. *Torres v. The Blackstone Grp.*, ECF 1:23-CV-0123, 4, at 6 (S.D.N.Y. Jan. 13, 2023), No. 23-138 (2d Cir. Aug. 10, 2023) (dismissing appeal as frivolous); *Torres v. U.S. Dep’t of Justice*, ECF 1:23-CV-0945, 5 (S.D.N.Y. May 1, 2023), *appeal pending* (2d Cir.).

Accordingly, Plaintiff is ordered to show cause why he should not be barred from filing any further actions in this court IFP without first obtaining permission from the court to file his complaint. *See Moates v. Barkley*, 147 F.3d 207, 208 (2d Cir. 1998) (per curiam) (“The unequivocal rule in this circuit is that the district court may not impose a filing injunction on a litigant *sua sponte* without providing the litigant with notice and an opportunity to be heard.”). Within thirty days of the date of this order, Plaintiff must submit to the court a declaration setting forth good cause why an injunction should not be imposed upon him. If Plaintiff fails to submit a declaration within the time directed, or if Plaintiff’s declaration does not set forth good cause why this injunction should not be entered, he will be barred from filing any further actions IFP in this court unless he first obtains permission from this court to do so.

### **CONCLUSION**

The complaint, filed IFP under 28 U.S.C. § 1915(a), is dismissed as frivolous and for failure to state a claim upon which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(i), (ii). Plaintiff shall have thirty days to show cause by declaration why an order should not be entered barring him from filing any future action IFP in this court without prior permission. A declaration form is attached to this order.

The Clerk of Court is instructed to hold this matter open on the docket until a civil judgment is entered.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: December 7, 2023  
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN  
Chief United States District Judge

---

---

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

---

Write the first and last name of each plaintiff or  
petitioner.

Case No. \_\_\_\_\_ CV \_\_\_\_\_

-against-

---

---

---

Write the first and last name of each defendant or  
respondent.

**DECLARATION**

---

Briefly explain above the purpose of the declaration, for example, "in Opposition to Defendant's Motion for Summary Judgment," or "in Response to Order to Show Cause."

I, \_\_\_\_\_, declare under penalty of perjury that the  
following facts are true and correct:

In the space below, describe any facts that are relevant to the motion or that respond to a court order. You may also refer to and attach any relevant documents.

Executed on (date)

Signature

---

Name

Prison Identification # (if incarcerated)

---

Address

City

State

---

Zip Code

Telephone Number (if available)

E-mail Address (if available)